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IN THE

Supreme Court of the United States

OCTOBER TERM, 1944.

No. 150.

SLACK BROS., INC., *Petitioner,*

v.

COMMISSIONER OF INTERNAL REVENUE, *Respondent.*

PETITION FOR REHEARING ON DENIAL OF PETITION FOR CERTIORARI AND BRIEF IN SUPPORT THEREOF.

C. J. BATTER,
902 American Security Building,
Washington, D. C.

Attorney for Petitioner.

March, 1945.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, Slack Bros., Inc., a Louisiana corporation, respectfully prays that this Court reconsider its denial of a writ of certiorari in this cause and gives as reasons therefore:

THAT, this Court granted certiorari, decided, and remanded *Webre Steib Company, Ltd.* (65 Sup. Ct. 578) on February 12, 1945; and the rules laid down for the guidance of the lower Court in that case are equally applicable to the instant case but the decision of the Court below is not in accord with such rules; insofar as

The Court below decided the cause on the basis of the margins—which in this case was adverse to the taxpayer—despite the rebuttal of such margins; and

The Court below failed to weigh the evidence contained in the findings of fact; and

The Court below failed to give any consideration to the 1936 crop experience; and

THAT, the decision of the Court below is not sustainable in law as the law has been determined by this Court; and, as set forth in detail in the accompanying Brief;

WHEREFORE, it is prayed that this Petition for Rehearing be granted and a writ of certiorari issue.

C. J. BATTER,
902 American Security Building,
Washington, D. C.

Counsel for Petitioner.

The foregoing Petition for Rehearing and the following Brief are presented for the consideration of this Court in good faith and in the firm belief of Counsel that equal justice under law requires a remand of the cause. This Petition is not filed for purposes of delay.

C. J. BATTER

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BRIEF IN SUPPORT OF PETITION FOR REHEARING.

This case is companion to and is similar in all material respects to *Caldwell Sugars, Inc.* (Docket No. 149), except that the taxpayer here was not financially embarrassed in 1933. Reference is here made to the Petition for Rehearing and Brief in support thereof in the *Caldwell* case for the reasons and argument why the petition for a writ of certiorari should be reconsidered.

The Tax Court in deciding the present case rests upon its opinion in the *Caldwell* case (R. 41) and the decision is subject to all the defects inherent in the opinion in that case. The 1936 crop experience was disregarded (R. 41); the fact that the tax shifted in the amount of $565.35 related to molasses instead of sugar was ignored (R. 40); the evidence regarding the quota and the Department of Agriculture's published admissions that the quota was respon-

sible for the rise was disregarded; the fact that the amount realized is contingent on the market failing to decline was ignored (R. 37); the fact that an oversupply of sugar in the base period and a low sales price prevailed was not taken into account as rebuttal evidence to the unfavorable margin (R. 37, 38); and the fact that prices during the 1934 crop season were about the same as in the preceding year was not considered (R. 51).

The reasons set forth in the Brief in support of the Petition for Rehearing in *Caldwell Sugars, Inc.* (Docket No. 149) filed this day, and the rules of law laid down by this Court in *Webre Steib Company, Ltd.* (65 Sup. Ct. 578) are fully applicable to the present case.

WHEREFORE, it is prayed that this Court will rehear its denial of a writ of certiorari, grant the same, and order the cause remanded to The Tax Court on the authority of *Webre Steib Company, Ltd.*

C. J. BATTER,
902 American Security Building,
Washington, D. C.

Counsel for Petitioner.

March, 1945.